

LEGAL EDUCATION IN MALAYSIA – SOME REFLECTIONS

Khaw Lake Tee¹

I. INTRODUCTION

Legal education in Malaysia was formally introduced in 1972 when the first Faculty of Law was established in that year at the University of Malaya. Prior to that, there was no formal structure for the provision legal education and training in Malaysia for entry into the profession. Law, if taught at all, was offered mainly as an adjunct to social science or economics. Any serious desire of obtaining legal education or training for entry into the legal profession was achieved by proceeding to the UK to read for the Bar, or to take their law examinations as external students.² In the case of Sabah and Sarawak, there was also the option of pursuing a law degree either in Australia or New Zealand.

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Prof Khaw Lake Tee,
University of Malaya (UM), Malaysia

Since its establishment, the Faculty of Law at the University of Malaya has witnessed many exciting developments, as it must. Some of these changes and developments are internal while some are the result of national or University policies or agenda. While the Faculty continues to be a major provider of legal education in the country in terms of its undergraduate and postgraduate programmes, it has faced, and continues to face, various issues and challenges. I propose to look at some of our current issues and challenges and reflect on the developments since our inception, the extent to which our original objectives are still relevant in the face of current demands, and the way forward.

¹ Dean and Professor, Faculty of Law, University of Malaya, Malaysia.

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I. INTRODUCTION

Legal education in Malaysia was formally introduced in 1972 when the first Faculty of Law was established in that year at the University of Malaya. Prior to that, there was no formal structure for the provision legal education and training in Malaysia for entry into the profession. Law, if taught at all, was offered mainly as an adjunct to social science or economics. Any person desirous of obtaining legal education or training for entry into the legal profession had, and still has, the options of pursuing such studies at the University of Singapore, proceeding to the UK to read for the Bar, or to take their law examinations as external students.² In the case of Sabah and Sarawak, there was also the option of pursuing a law degree either in Australia or New Zealand.

Since its establishment, the Faculty has undergone numerous changes and witnessed many exciting developments, as it must. Some of these changes and developments are internal while some are the result of national or University policies or agenda. While the Faculty continues to be a major provider of legal education in the country in terms of its undergraduate and postgraduate programmes, it has faced, and continues to face, various issues and challenges. I propose to look at some of our current issues and challenges and reflect on the developments since our inception, the extent to which our original objectives are still relevant in the face of current demands, and the way forward.

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II. ESTABLISHMENT OF THE FACULTY OF LAW, UNIVERSITY OF MALAYA

A. Background

The idea for a law faculty at the University of Malaya was first mooted in 1962, not too long after the establishment of the University in Kuala Lumpur.³ However, it was not accepted as it was felt that the law faculty at the University of Singapore, which was established for the Federation of Malaya and Singapore, was sufficient to meet the demand for local legal education.⁴

Notwithstanding the lukewarm response, the calls for a local law school continued unabated throughout the 1960s and 1970s. The idea received a boost when the Report of the Higher Education Planning Committee was published on 25th March 1967.⁵ Basically, it was felt that any independent nation should have its own law school. According to the Report,

"Every independent nation must possess every means to express and govern itself. In countries having law colleges, the function of analyzing and grouping all the legal rules enacted in the society devolves on the College professors and scholars, but this aspect of the work is the least attempted in this country wherein, with the

³ Prior to that, the University of Malaya, established in 1949 with the amalgamation of King Edward VII College of Medicine and Raffles College, had two branches, one in Kuala Lumpur and the other in Singapore. On 1st January, 1962, the University of Malaya became two separate entities, the University of Malaya situated in Kuala Lumpur and the University of Singapore in Singapore.

⁴ See the Minute 7(1) of the Meeting of the University Court, 15th June, 1962 reproduced in the *Faculty of Law, University of Malaya 1972-1997* (Faculty of Law, 1997) at p 10.

⁵ The Committee was formed in 1962 to review the arrangements for higher education in the Federation of Malaya and to make recommendations for the development and improvement of such education in the light of foreseeable needs and financial resources of the country: see *Faculty of Law*, *ibid* at 12.

exception a few books and monographs written on constitutional law, practically no other books have been produced."⁶

It was also recognized that there was a need for local research into Malaysian law, to take into account the customs, traditions and cultures of the various people living in the country.⁷

The Report also asserts that

"Facilities for the study of law should be provided in this country with the hope of training people with suitable aptitude to be lawyers not only to serve commercial communities, but also to serve the public at large. It is only by having these facilities that a proper national legal system can evolve."⁸

A local law school was also seen as an answer to the problem of the shortage of lawyers in the country, not only in the private sector but also in the public service. At the time of the Report, it was claimed that the ratio of lawyer-population ratio was 1: 23,000. The aim was to raise it for the next 20 years to 1:5,000.

In the late 1960s and early 1970s, the possibility of restriction of places for Malaysians to read for law in Singapore and the increase in fees for law studies in the UK increased pressure on the government to approve the establishment of a local law school.

On 29th April 1971, the University Court appointed a Board of Studies to look into the establishment of a faculty of law. In this its report, the Board expressed views that echoed those of the earlier Higher Education Planning Committee.⁹ According to the Board, the country could not

⁶ Id.

⁷ 'Don: We must have our own School of Law' The Straits Times, 19th December 1969.

⁸ Id.

⁹ *Supra* n 2.

continue to rely on foreign institutions for the training of its legally qualified persons and that the time had come for a faculty of law to be established at the University of Malaya. It was felt that in any independent nation, there should be an institution that devoted itself to the study and teaching of law. The study should be oriented to the needs of the country, which only a local law school would be able to do.

Pursuant to the recommendation of the Board of Studies, the Faculty of Law was finally established on 21st April 1972 with its first intake of 50 students for the 1972/73 academic session.¹⁰

B. Objectives for the Establishment of the Faculty of Law

The objectives for the establishment of the first local law school could be summarised from the report of the Board of Studies, namely, among others,

- the provision of legal education and research within the context of Malaysia, taking into account its Federal Constitution, its laws, and the influence of its society and the different cultures on the development of its laws;
- the training of legally qualified persons who are also proficient in Bahasa Malaysia, the National Language, in anticipation of the eventual implementation of the use of the National Language in the courts and in the legal departments;¹¹

¹⁰ Appointed as the first dean was the late Tan Sri Datuk Ahmad Ibrahim, who was one of the prime movers behind the establishment of the Faculty of Law: see *supra* n 7. He served as the dean from 1972-1983.

¹¹ Section 8 of the National Language Act 1963/67 requires all court proceedings to be in the National Language unless there is an application for another language to be used in the interests of justice. Order 92 of the Rules of the High Court 1980 also requires all court documents to be in the National Language.

- the promotion of the usage of Bahasa Malaysia in legal education and research in anticipation of the conversion of the medium of instruction in national schools to Bahasa Malaysia; and
- the provision of legal training to meet the demand for locally trained lawyers for the legal and judicial service, the profession and the corporate sector.

The Board was also of the view that the faculty should also be a "centre for legal research and postgraduate studies".

C. *General Overview of the Degree Programmes offered*

The Faculty offers programmes leading to the degrees of the Bachelor of Laws (LLB), Master of Laws, Master of Criminal Justice and Doctor of Philosophy. The LLB programme is a four-year programme which entitles a graduate, on the completion of a period of pupillage, to be admitted as an advocate and solicitor of the High Court of Malaya. The programme is an academic as well professional course and its curriculum encompasses both academic and professional components.

In 1996, in line with the semester system adopted by the University and also the Government's directive that all degree programme be completed within three years, a review was conducted to convert the structure of the undergraduate degree programme. In restructuring the law degree programme to fit into a semester system which basically comprises two or three semesters per academic year of 14 weeks each, various considerations had to be taken into account. First, it was imperative to retain the academic and professional elements in our law degree programme to ensure its continued recognition for admission to the Malaysian Bar. Secondly, the academic component must comprise certain prescribed core law subjects. The argument was advanced that in order to accommodate the academic and the professional aspects of legal

education, as well as the inclusion of prescribed core law subjects, a 3-year programme was not adequate. At a minimum, a 4-year degree programme was needed. However, to meet the Government's directive, the Faculty introduced a separate 3-year degree and academic programme, the Bachelor of Jurisprudence (B. Juris), while at the same time maintaining the 4-year LLB degree programme. Under the current structure, the academic component is taught in the first three years while the professional component is taught in the final part or fourth year. A student could opt not to proceed to the final part and apply to graduate with just the B Juris degree after meeting all the necessary requirements for graduation. A B Juris degree, however, does not qualify the holder for legal practice; to be a qualified person for the purpose of pupillage, the graduate must pass the Certificate in Legal Practice (CLP) conducted by the Malaysian Qualifying Board.¹² Students who proceed to read for the final part will graduate with an LLB degree. Hence, on the basis that a 4-year degree programme was essential for the purpose of meeting the requirements purposes of legal practice and admission to the Bar, the Faculty managed to retain the 4-year structure.

Arguing that the compulsory or core law courses could not be taught fully and sufficiently within a semester of only 14 weeks of 3 hours each, the Faculty was able to retain the old format of teaching core papers over an academic session, that is, over two semesters instead of one, with the final examinations at the end of the second semester. Only optional or elective courses are taught within one semester, with examinations at the end of the semester concerned.

In so far as the Master of Laws degree programme is concerned, the Faculty offers LLM by dissertation, coursework and dissertation and

¹² The CLP examinations are conducted to enable Malaysian holders of UK law degrees to qualify for pupillage and thereafter for legal practice: see the Legal Profession Act 1976: see sections 2 and 12.

coursework. The total number of credit hours is 36 for the LLM by coursework and LLM by coursework and dissertation.¹³

The Faculty uses both the National Language and English as its medium of instruction in its undergraduate degree programmes.¹⁴ Lectures are conducted in the National Language while English is used in tutorials and seminars. Examination questions are prepared in both languages and students have the option of answering either in the National Language or in English. Unlike the LLB degree programme, the LLM coursework programme is conducted in English.

III. THE CHALLENGES

The Faculty of Law is now 33 years old and has produced about 2,428 graduates¹⁵ many of whom are prominent personalities in legal practice or holding high offices in the Judicial and Legal Service, Government, politics, business, industry and academia. The Faculty is proud that among its alumni are the Honourable Attorney-General, High Court Judges and Judicial Commissioners, Cabinet Ministers, senior partners in law firms, CEOs of corporations, statutory bodies, and academics both here and overseas. Our law graduates, by and large, have no difficulties in obtaining places for pupillage, post-graduate studies abroad or employment.

¹³ Previously, prior to the introduction of the semester system, the LLM programme by coursework required the students to do 4 papers, instead of the current minimum of 6 papers which add up to a total of 36 credit hours.

¹⁴ In the first three years of its establishment, lectures and tutorials were conducted wholly in the English language. The adoption of bilingualism only started in the 1975/76 academic session.

¹⁵ Excluding graduates from the Bachelor of Jurisprudence (External) degree programme conducted by the Faculty and its post-graduate degree programmes. The Faculty started to offer the B. Juris (External) in 1996, as part of its effort to make available legal education to more students. Since then, a total of 522 students have graduated from the programme.

It is considered to be 'a pioneer in producing a new breed of graduates, that is, graduates who are proficient in both the English language and the National Language'.¹⁶

It continues to attract students who have obtained very good results in the Higher School Certificate Examinations (hereinafter referred to as 'STPM').¹⁷

Although the initial intake of students was fifty in the first three years and subsequently increased to a hundred, the enrolment has remained at a hundred per academic session. As a result, the size of our tutorial groups has remained at a level that is conducive for class discussion and participation.

With a staff of thirty-seven, the Faculty has continued to be a major provider of legal education in the country in terms of its undergraduate and postgraduate programmes. In addition to their teaching duties, academic staff members have contributed to the development of the law in Malaysia by their research and publication and their participation in conferences as well as in various committees and advisory bodies in Government ministries and agencies and other organizations, both nationally and internationally.

But there are challenges. In this regard, I would like to refer to a conference that was held 13 years ago in conjunction with the 20th anniversary of the Faculty entitled 'Legal Education in Malaysia – Quo Vadis?'¹⁸ The conference had two main objectives – firstly, to identify and

¹⁶ Quoted from the Keynote Speech of the then Lord President of the Supreme Court of Malaysia, YAA Tun Dato' Seri Abdul Hamid bin Haji Omar in the 'Legal Education in Malaysia – Quo Vadis?' Proceedings 20th Anniversary Law Conference by Khaw Lake Tee (ed), Faculty of Law, University of Malaya, Kuala Lumpur (1993) at iii.

¹⁷ For entry into its undergraduate degree programme, the Faculty requires a minimum of 5 credits including credits in two language papers, Bahasa Malaysia and English, at the School Certificate Examinations (SPM) level.

¹⁸ Proceedings 20th Anniversary Law Conference *supra* n 16.

discuss the current issues and challenges faced the providers of legal education; and secondly, to try and chart a new direction for legal education so as to ensure its relevance in the context of national needs and development. Within this context, the conference discussed the roles and functions of the law schools both public and private, the role of Bahasa Malaysia (or the National Language) and the English language in legal education and legal practice, and continuing legal education. Reading through the papers presented and the notes on the discussion, it would appear that the issues and challenges have not changed that much since 1992. Indeed they are still very much alive in 2005. And yet, they are not necessarily the same.

First, the 2005 legal education landscape is very different from those of 1972 and 1992. If in 1972, there was only one public law school,¹⁹ in 1992, there were 4. Today, we are one among 6 other public institutions of higher learning providing legal education in the country, not to mention many more private institutions of higher education offering programmes leading to law degrees either on their own or in collaboration with foreign law schools. At the same time, foreign law schools continue to attract Malaysians wishing to obtain a legal education.

There is thus greater competition among the various law schools for suitably-qualified students from the various communities. That in itself is not necessarily bad. However, the Government's practice of selecting pre-STPM students from particular sections of the population for study overseas and that of certain local law schools in conducting pre-university or matriculation programmes for law have placed constraints on law schools which select students from the STPM pool. As invariably only the very good students are selected for pre-university or matriculation courses, law schools which select students from the STPM pool, such as

¹⁹ The MARA Institute of Technology, the predecessor of the University of the Institut Teknologi MARA (UiTM), conducted classes for students preparing for the LLB External degree programme offered by the University of London; it did not offer its own law degree programme until 1984.

our Faculty,²⁰ find that their choice of suitably-qualified candidates from particular certain communities is severely limited. Last year, the Ministry of Education started its pre-law programme to prepare students, who have passed their School Certificate Examinations (SPM), for entry into the various public law schools for the 2005/2006 academic session. The overall effect is to provide the Faculty with another option in its selection of suitably-qualified students; it is thus no longer restricted to students from the STPM pool. However, it remains to be seen whether this option will have an impact on the quality of students admitted into its programme.

This brings me to the second challenge: the lack of proficiency in the English language among UM law students and graduates. In the early years, the challenge was to produce law graduates proficient in the National Language in an environment where the teaching and studying law in that language was something new for both lecturers and students. The proficiency of the students in the English language was not an issue. Today, we can proudly proclaim that we have been very successful in producing graduates who are able to draft legal documents and conduct court proceedings in the National Language. Arguably, we may have met our objective of producing graduates who 'are also proficient in Bahasa Malaysia'. However, as a former colleague observes,

"... contrary to the expectations of the Board of Studies, the Bilingual Policy adopted by the Faculty of Law has not, lately produced legally qualified men who are *also* proficient in Bahasa Malaysia but have instead produced a worrying number of graduates who seem to be solely proficient in Bahasa Malaysia."²¹

²⁰ The Faculty started its pre-law programme in 1999, but the Ministry of Education directed it to discontinue the programme after only one intake. Currently, only two other law schools are permitted to conduct their own pre-law matriculation programmes.

²¹ Nik Ramlah Mahmood, 'Language and Legal Education in Malaysia – Past and Emerging Trends' in the *Proceedings of 20th Anniversary Law Conference supra* n 16 at 134.

That was in 1992. In 2005, the situation has not improved. In fact, it may have even worsened. The conversion of the medium of instruction in all national schools to the National Language and the shift in the emphasis with respect to the English language have made the provision of legal education in the National Language a much easier task. But the flipside is the decline in the standard of the English language among students entering the universities.²²

The decline in the standard and proficiency of English presents tremendous difficulties in the teaching and learning processes at the Faculty. Although lectures are conducted in a language in which the students have no difficulties in understanding, tutorials, in which participation in class discussions is required, are still in English. As legal textbooks, materials, judicial decisions and documents are still largely written or prepared in English, the lack of proficiency in the language creates obstacles in the students' ability to study, understand, analyse and apply legal principles, concepts and cases; to participate effectively in discussions, moot and mock sessions and professional practice courses; to communicate effectively; and to prepare written assignments or legal documents in English. To compound the problem, the University no longer requires the students to enrol in English language classes. In the early years, when students were from schools with either Malay or English as their medium of instruction, language classes were conducted to improve their proficiency in either Malay or English. In later years, with the adoption of Malay as the medium of instruction in all national schools, it was no longer necessary to conduct Malay language classes. Classes in English remained but were discontinued a few years ago.

If the decline is left unchecked, it is very likely that our graduates will face tremendous obstacles in the workplace, if they have not already. A survey conducted by the Faculty among law firms in 2005 confirmed what

²² Students who attend national-type schools may also be proficient in other vernacular languages, such as Mandarin and Tamil.

we have been suspecting for a while now, and that is the declining standards of English among UM law graduates.²³ It is also very likely that they will face competition from law graduates from foreign universities where English is used, and from 2 other local law schools, which use English as their medium of instruction. While we may have proved that it is possible to teach and study law in the National Language, and therefore produce graduates who are capable of using and adapting the language in legal matters and in the courts, our efforts in this regard may have resulted in the marginalization of our graduates.²⁴ The challenge now is produce graduates who are not severely handicapped by the language problems and at the same time to ensure the success of the bilingual policy.

Thirdly, there is an urgent need to review the curriculum of our law programme to prepare our graduates for an increasingly competitive environment. The aims of any law school are to provide its students with an understanding of the basic law subjects and general legal principles; and to train them in the basic legal skills such as analysis, application, research, writing, advocacy and problem-solving. However, there are now greater expectations of law schools in terms of their output. Our survey would appear to indicate that it is no longer sufficient to provide our graduates with training in the basic understanding, appreciation, analysis and application of legal principles, research and writing, and some elements of professional training.²⁵ Increasingly, there are pressures on law schools to produce graduates who are not only

²³ This modest survey was conducted mainly to verify statements that the standard of UM law graduates had declined and also to assess employer's satisfaction with our graduates. For the survey, 780 forms were distributed to various law firms out of which 110 responded. Out of the 110 forms, only 92 could be analysed. In so far as English was concerned, 4 rated our graduates very good, 34 good, 38 average, 13 bad and 3 very bad. The results with respect to proficiency in Bahasa Malaysia were more encouraging, though not surprising. 8 rated the graduates very good, 63 good and 21 average. No one rated the graduates bad or very bad.

²⁴ See also Nik Ramlah Mahmood *supra* n 21 at 143.

²⁵ While generally our graduates are rated fairly well in terms of their knowledge of the law, research skills, they are rated average in terms of their problem solving, communicative and litigation skills.

knowledgeable in the law but who possess the skills and ability to discharge the various duties of a lawyer even though they may have little or no practical training. The training offered by law schools, particularly with respect to the professional component of our programme would appear to be insufficient and woefully inadequate. In addition, law graduates are also expected to be linguistically proficient, great communicators, confident and in possession of inter-personal skills. In other words, apart from their academic and professional training, they must be in possession of what is termed as 'soft skills'. The challenge is to bridge the gap between the expectations of employers and the level of preparedness of graduates for the workplace. The process may require a review of the focus and content of our curriculum and our method of delivery.

It may also require an honest appraisal of our existing academic resources. Currently, most, if not all the academic staff, who have little or no professional training or qualifications other than their academic qualifications, are in no real position to meet the demands for a truly professional training programme for would-be members of the legal profession. While resort to part-time staff from the profession has its advantages and merits, there are also obvious shortcomings, not least the level of commitment and the uncertainties surrounding such a measure. However, underlying all the above concerns is a more fundamental issue: is law school the place to train lawyers for the profession and to teach them inter-personal skills, or is its role only to provide legal education?

There is also demand for inclusion within the curriculum of law subjects that are perceived to be of current interest or commercially, socially or politically important, such as intellectual property law, information technology law, various aspects of international law, environmental law, terrorist law and gender. The argument is that the law school curriculum must be relevant to the profession and the industry in terms of its content and training. This demand creates a certain amount of pressure on

already compact curriculum. For its degree to be recognized for purposes of admission to the Malaysian Bar, the curriculum of the degree programme must offer various core subjects such as contract, tort, constitution, criminal law, land law and equity and trusts. Additionally, the law degree programme must meet overall University requirements in terms of non-law subjects. There is only so much that a law school curriculum can accommodate.

There is also a third reason for the need to review the law school curriculum. In 1997, we converted our term system to the semester system. Substantively, as alluded to earlier, the conversion has not really changed the structure and contents of our law degree programme. In essence, it is still very much a structure designed for the term system mapped onto the semester system. In the long term, it is not really practical to continue the same structure without any real modification to suit the semester system. After seven years, the time has come to review the law programme to ensure that maximum benefit is obtained from the semester system and perhaps to take into account some of the above concerns.

IV. NEXT STEPS

The Faculty has started to explore measures and to take steps to address some of the above concerns. For a start, more efforts are being made to re-establish linkages with members of the legal profession, judicial and legal service and corporate sectors, alumni and of course other law academics. To this end, we have actively involved members of the profession in our lecture series, seminars, moot, attachment programmes and other staff and student activities.

We have also revived the Faculty's Advisory Council comprising representatives of the Chief Justice, Chief Judge of Sabah and Sarawak, the Bar Council and the Attorney-General. The terms of reference of the

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Council are as follows: to act as an advisory body to the Faculty, and to assist the Faculty in matters relating to the teaching and research of the Faculty and their requirements to the legal profession and the needs of the country.²⁶ We hope to receive valuable feedback from the Council in its deliberations later this year. It is hoped that these efforts will foster greater interaction between our staff and members of the profession for mutual benefit.

Students are encouraged to participate in academic, social and community activities as well as programmes with law students from other universities, both nationally and overseas. To prepare students for employment, we have encouraged them to host career guidance sessions and talks. We are also exploring the possibility of reviving compulsory English language classes to deal with the language issue. We do not expect miracles but it is hoped that through some of the above activities, the problems confronting the students may be minimized.

The Faculty is also currently in the process of reviewing its curriculum which may take some time to complete.

The above are some of the steps that are within our control and therefore can be taken immediately.

However, there is a more important step that the Faculty must consider and that is to determine the focus and direction the Faculty must take if it is to remain relevant to the provision of legal education in the country. Foremost in this enquiry is the issue of whether the objectives for which the Faculty was established are still relevant. The legal, social, economic and political landscape in 1971 when the role and objectives of the Faculty were determined has changed. The Faculty is also no longer the

²⁶ The Advisory Council, known previously as the Board of Law, was constituted in 1972. After a number of years of inactivity, the Council was reactivated with an expansion in the terms of reference and an increase in the number of representatives from the Attorney-General's Chambers.

only provider of legal education in the country. Of necessity, the law curricula of all the law schools are more or less the same, with only differences in the focus in some instances. What distinguishes, then, the Faculty of Law of the University of Malaya from the other law schools other than the fact that we were the pioneers in the provision of legal education in this country? What direction should the Faculty take in terms of its degree and postgraduate programmes, its research activities, the training of its staff and students, its facilities and its relationship with other disciplines within and outside the university? How is the Faculty to balance the competing needs of academic and professional training and in the process produce law graduates who are not only technically and professionally sound but also conscious of their responsibilities to society? What is the role of the Faculty in the context of the higher education agenda of the country? These are some of the issues that the Faculty must consider and it hopes to commence the review process soon by making it as part of the agenda for the first meeting of the Advisory Council.

After 33 years, the Faculty is at the crossroads. It can rest on its laurels and carry on as it has in all these years, or it can stir itself, do an honest reappraisal of its efforts thus far, and reinvent itself, if need be.
